

² The Board notes that, during the pendency of this appeal, OWCP issued a November 29, 2021 decision, which reviewed the merits of appellant's case and denied modification of its May 26, 2021 decision. The Board and OWCP may not simultaneously exercise jurisdiction over the same issue(s). 20 C.F.R. § § 501.2(c)(3), 10.626; *see D.P.*, Docket No. 20-1330 (issued February 19, 2021); *J.C.*, Docket No. 19-1849, n.2 (issued November 17, 2020); *Russell E. Lerman*, 43 ECAB 770; (1992); *Douglas E. Billings*, 41 ECAB 880 (1990). Consequently, OWCP's November 29, 2021 decision is set aside as null and void.

related to her accepted July 27, 2020 employment injury; and (2) whether OWCP properly denied appellant's request for a hearing/review of the written record pursuant to 5 U.S.C. § 8124(b).

FACTUAL HISTORY

On August 6, 2020 appellant, then a 34-year-old rural carrier associate, filed an occupational disease claim (Form CA-2) alleging that she sustained pain, loss of range of motion, and loss of strength in her right shoulder due to factors of her federal employment, which required repetitive motion. She noted that she first became aware of her condition and realized its relation to her federal employment on July 27, 2020. OWCP accepted the claim for bursitis and bicipital tendinitis of the right shoulder. Appellant returned to full-duty work with no restrictions on August 4, 2020.

On October 16, 2020 appellant filed a claim for compensation (Form CA-7) for intermittent disability from work for the period August 1 through 14, 2020. She submitted a time analysis form (Form CA-7a) claiming eight hours of disability on August 1, 3, 5, and 10, 2020.

By decision dated January 27, 2021, OWCP found that appellant had established entitlement to wage-loss compensation for disability on August 1 and 3, 2020, but denied the remaining claimed disability, as she had returned to work on August 4, 2020.

On February 25, 2021 appellant requested reconsideration of OWCP's January 27, 2021 decision. With her request, she submitted, a medical report dated August 5, 2020 from Dr. Syed Naseeruddin, a family medicine specialist, which indicated that Dr. Naseeruddin had examined appellant for bicipital tendinitis and subacromial bursitis of the right shoulder. Appellant also submitted a note dated August 5, 2020 from Jodie Holmes, a nurse practitioner, which indicated that appellant was a patient who was being treated for a work-related injury, and that she had been prescribed physical therapy two times a week. Ms. Holmes requested that appellant be excused from work on Mondays and Tuesdays for the next four weeks so that she could receive proper care for her injury.

In a report dated August 5, 2020, Dr. Nakoma Johnson, a chiropractor, indicated that she treated appellant for bicipital tendinitis and subacromial tendinitis of the right shoulder. On May 26, 2021 OWCP received an August 10, 2020 report from Dr. Johnson indicating that appellant was seen that day for treatment of bicipital tendinitis and subacromial bursitis.)

By decision dated May 26, 2021, OWCP modified and vacated its January 27, 2021 decision in part and affirmed in part. It found that appellant had submitted sufficient evidence to establish that she attended medical appointments on August 5 and 10, 2020 for the accepted conditions. However, it also found that as appellant had claimed eight hours of leave without pay (LWOP) for each appointment, and as routine medical appointments entitled appellant only up to four hours of LWOP, the remaining four hours of LWOP requested on August 5 and 10, 2020 remained denied.

On August 31, 2021, appellant requested reconsideration of OWCP's May 26, 2021 decision.

On September 5, 2021, in a letter addressed to OWCP's Branch of Hearings and Review, appellant requested a formal appeal from all denied claims for compensation under this case. OWCP treated this as a request for a hearing/review of the written record.

By decision dated September 21, 2021, OWCP denied appellant's request for a hearing/review of the written record as appellant had previously requested reconsideration by OWCP.

LEGAL PRECEDENT -- ISSUE 1

OWCP's procedures provide that wages lost for compensable medical examinations or treatment may be reimbursed.³ A claimant who has returned to work following an accepted injury or illness may need to undergo examination or treatment and such employee may be paid compensation for wage loss while obtaining medical services and for a reasonable time spent traveling to and from the medical provider's location.⁴ Wage loss is payable only if the examination, testing, or treatment is provided on a day which is a scheduled workday and during a scheduled tour of duty. Wage-loss compensation for medical treatment received during off-duty hours is not reimbursable.⁵ The evidence should establish that a claimant attended an examination or treatment for the accepted work injury on the dates claimed in order for compensation to be payable.⁶ For a routine medical appointment, a maximum of four hours of compensation may be allowed. However, longer periods of time may be allowed when required by the nature of the medical procedure and/or the need to travel a substantial distance to obtain the medical care. The claims for wage loss should be considered on a case-by-case basis.⁷

OWCP's procedures also provide that "some agencies do not allow employees in particular job classifications, (e.g. USPS rural carriers) to take less than a full day off from work. Such employees should be compensated for the full shift of lost time from work."⁸

ANALYSIS -- ISSUE 1

The Board finds that this case is not in posture for decision.

OWCP has accepted that appellant attended medical appointments on August 5 and 10, 2020. In its May 26, 2021 decision, it found that she was entitled to four hours of wage-loss compensation for LWOP on each of those dates, but appellant filed a claim for compensation for

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Wages Lost for Medical Examination or Treatment*, Chapter 2.901.19 (February 2013).

⁴ *Id.* at Chapter 2.901.19a; *see M.B.*, Docket No. 19-1049 (issued October 21, 2019); *T.S.*, Docket No. 19-0347 (issued July 9, 2019); *E.W.*, Docket No. 17-1988 (issued January 28, 2019).

⁵ *Id.* at Chapter 2.901.19a(2).

⁶ *Id.* at Chapter 2.901.19a(3).

⁷ *Id.* at Chapter 2.901.19c.

⁸ *Id.*

eight hours of LWOP on August 5 and 10, 2020, and OWCP denied the four additional hours of wage-loss compensation for leave without pay on those dates.

As noted above, OWCP's procedures provide that "some agencies do not allow employees in particular job classifications, (*e.g.* USPS rural carriers) to take less than a full day off from work. Such employees should be compensated for the full shift of lost time from work."⁹ Appellant was employed as a rural carrier associate. In denying appellant's claim for the additional four hours of wage-loss for her medical appointments on August 5 and 10, 2020, OWCP did not make a determination as to whether Chapter 2.901.19c was applicable. As such, the Board is unable to render an informed decision as to whether OWCP's May 26, 2021 decision denying the additional four hours of wage-loss compensation for her medical appointments was proper.

The Board will, therefore, set aside OWCP's May 26, 2021 decision and remand the case to enable OWCP to determine whether application of Chapter 2.901.19c of its procedures is appropriate. Following any other such further development as OWCP deems necessary, it shall issue a *de novo* decision on appellant's claim.¹⁰

CONCLUSION

The Board finds that this case is not in posture for decision.

⁹ *Id.*

¹⁰ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the May 26, 2021 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board. The September 21, 2021 decision of the Office of Workers' Compensation Programs is set aside as moot.

Issued: May 12, 2022
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board